IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 44 OF 2004

Ravindra Haldankar,
Central Jail, Aguada,
Goa. ... Petitioner

versus

State of Goa
through Inspector General
of Prisons, Goa. ... Respondent

Mr. S. S. Karpe, Advocate under the Legal Aid Scheme for the Petitioner.

Mr. Guru Shirodkar, Additional Government Advocate for the Respondent/State.

CORAM : N. A. BRITTO,J.

DATE : 27TH AUGUST,2004.

ORAL JUDGMENT

Rule by consent heard forthwith.

2. Heard Mr. S. S. Karpe, learned Counsel under the Legal Aid Scheme for the Petitioner and Mr. Guru Shirodkar, learned Counsel for the State/Respondent.

3. The Petitioner, a prisoner undergoing sentence of 5 years under Section 304(II) of the Indian Penal Code, has invoked the jurisdiction of this Court under Article 227 of the Constitution of India to challenge the

Order dated 28th June, 2004 of the learned Inspector General of Prisons declining to release the Petitioner on parole for 60 days.

4. The Petitioner was earlier released on parole from 3rd September, 2002 to 10th October, 2002. The Petitioner again sought parole in the year 2003 but his application was rejected by Order dated 15th October, 2003 of the Inspector General of Prisons. The said Order was a subject matter of Criminal Writ Petition No.7 of 2004 which was rejected by Order of this Court dated 1st March, 2004. Then also, the Petitioner had sought his release on parole on the ground that he wanted to restart his tailoring shop and to see his wife and mother. This Court vide Order dated 1st March, 2004, held that the Inspector General of Prisons had applied his mind to the reasons stated by the Petitioner for seeking his release on parole and, therefore, there was no infirmity in the reasons given by the Inspector General of Prisons in rejecting the request of the Petitioner to be released on parole by his Order dated 15th October, 2003.

5. The Petitioner this time, applied for parole, inter alia, on the ground that (i) he had not seen his old aged mother who on account of the old age was unable to come and see him during visits and (ii) he had a tailoring shop which was closed for more than 3 years and

the sewing machines required repairs and the shop required to be rehabilitated.

6. It appears that the Inspector General of Prisons called for a report from the Superintendent of Police. A copy of the said report, was given for my perusal, and the said report states that the prisoner has a wife, a son and an aged mother who stays along with the wife of the prisoner. The report also states that the prisoner is having a tailoring shop, which is closed since last 3 years in which the prisoner has 3 sewing machines. The report further proceeds to mention that the prisoner is facing conviction in a serious case and his release on parole may not be considered.

7. In the impugned Order, the Inspector General of Prisons has mentioned that the reasons given by the said prisoner for seeking parole are not genuine and of emergent nature as it does not attract Rule 19 of the Prisons(Goa, Daman and Diu Furlough and Parole) Rules, 1968.

8. At the hearing of this Petition, Mr. Karpe, learned Counsel for the Petitioner has submitted that there are about 7 to 8 months left for the release of the Petitioner and the Petitioner before the release wanted to put the sewing machines and the shop in order so that

upon his release, the Petitioner could restart his business. Mr. Karpe, learned Counsel has also submitted that the Inspector General of Prisons has not at all considered the ground that the Petitioner was longing to see his aged mother who was unable to come and see him.

9. Rule 19 of the Prisons(Goa, Daman and Diu Furlough and Parole) Rules, 1968(Rules, for short) provides that a prisoner may be released on parole for such period as the Competent Authority referred to in Rule 18 in its discretion may order, in cases of serious illness, or death of any member of the prisoner's family or of his nearest relatives or for any other sufficient cause.(Emphasis supplied)

10. Rule 22 of the Rules deals with the procedure of dealing with the applications for parole, and, inter alia provides that the Inspector General of Police shall make enquiries to ascertain whether the ground or grounds on which the parole is applied for is or are genuine and submit immediately his report to the Competent Authority mentioning, inter alia, whether it recommends the grant of parole and also whether there is a likelihood of breach of peace if the prisoner is released on parole.

11. By virtue of Rule 28 of the Rules, the provisions of Rule 8(5), 10, 11 and 12 are made

applicable, mutatis mutandis for release of prisoners on parole. Rule 8(5) provides that if furlough is not recommended, adequate reasons shall be given.

12. A Division Bench of this Court in the case of **Manjulabai Kisna Gulabe and others** v. **State of Maharashtra**(2003 Bom.C.R.(Cri.) 87) referring to the expression "any other sufficient cause" in Rule 19 has observed that there cannot be a strait jacket formula or hard and fast rule for the purpose of laying down any specified category of the case which would amount to sufficient cause as was observed by the Full Bench of the Gujarat High Court in the case of **Bhikhabhai Devshi** v. **State of Gujarat**(AIR 1987 Guj.136). In that case, the prisoner was ordered to be granted parole to attend the marriage of her close relative. Rule 19 of the Prisons(Goa, Daman and Diu Furlough and Parole) Rules, 1968 has been enacted in order to make the prison system more humane. In my view the said expression is elastic enough to consider release of the prisoners in appropriate cases. The prisoner in the case at hand has been in prison almost continuously for a period of about 2 years, after he was released for the first time on parole for the period indicated hereinabove and had expressed his desire to visit his aged mother who was unable to come and visit him. Likewise, the prisoner had also shown his desire to put his shop and the sewing

machines in order so that he could start his business in the next 7 to 8 months after he was released from prison.

13. Whether these two grounds given by the prisoner could have been considered within the said expression "any other sufficient cause" was a matter to be decided by the Inspector General of Prisons. All that the Inspector General of Prisons has stated in the impugned Order is that the reasons given by the prisoner do not attract Rule 19 of the Prisons(Goa, Daman and Diu Furlough and Parole) Rules, 1968 and this too in a case where by virtue of Rule 8(5) of the aforesaid Rules, he was required to give adequate reasons. Reasons not given cannot be supplemented or supplanted by filing a copy of the report received from the Police, before this Court. This position was recognised in the case of **Commissioner of Police, Bombay** v. **Gordhandas Bhanji**(AIR (39) 1952 SC 16) wherein the Supreme Court observed that "we are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations, subsequently given by the officer making the order of what he meant, or by what was in his mind, of what he intended to do". Not that the Police report reveals what was stated by the said prisoner as grant of his release on parole was true or not. The application of the prisoner has been rejected mechanically. Reasons are the links between the materials on which certain

conclusions are based and actual conclusions. They disclose how the mind is applied to a subject matter for a decision. They should reveal a rational nexus between the facts considered and the conclusions reached. The Police does not appear to have enquired into the truthfulness of the grounds given by the prisoner nor the Inspector General of Prisons appears to have considered the same. On this count alone the impugned Order, inasmnuch as it does not give adequate reasons in support of the same deserves to be set aside, with a further direction to the Inspector General of Prisons to consider afresh the grounds given by the prisoner within a period of 30 days and dispose off the application of the prisoner in accordance with law.

14. Rule made absolute on the above terms.

N. A. BRITTO, J.

RD.